SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1517

JESSE VANCE MEHCIZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The petitioner, JESSE VANCE MEHCIZ, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on January 11, 1971. A Petition for Rehearing was denied by the United States Court of Appeals for the Ninth Circuit on February 8, 1971.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the appendix "A" hereto. The order of the United States Court of Appeals denying the Petition for Rehearing appears in appendix "B" hereto. No opinion was rendered by the United States District Court for the District of Arizona.

JURISDICTION

This Honorable Court's jurisdiction is invoked under Title 28, United States Code, section 1254(1). The jurisdiction of the United States Court of Appeals for the Ninth Circuit was invoked by Title 28, United States Code, section 1291.

QUESTION PRESENTED

Was the decision of the Court of Appeals for the Ninth Circuit regarding the constitutional validity of a search of a suitcase a decision of a federal question in direct conflict with the decision of the United States Supreme Court in Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed. 2d 685 (1969).

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the fourth amendment set forth in appendix "C."

STATEMENT OF THE CASE

On September 29, 1969, Arthur Fluhr, Special Agent of the Bureau of Narcotics and Dangerous Drugs, received information from a reliable informant that a quantity of LSD would be transported into Phoenix, Arizona, the following day. The informant told Agent Fluhr the suspect's first name and gave the agent a general physical description. The informant also knew the airline and the flight number on which the suspect would arrive.

Agent Fluhr, together with a team of narcotics officers, met the flight on its arrival. They spotted the petitioner who fit the description they had been given, and placed him under arrest.

When arrested, petitioner was carrying a suitcase. The officers removed the suitcase from his possession and control and placed handcuffs on petitioner. There was no danger that petitioner would get the suitcase, obtain a weapon or destroy evidence in-

side. Agent Fluhr thereupon searched the suitcase and found LSD tablets. The tablets were admitted into evidence at petitioner's trial over his objection.

ARGUMENT

In Chimel v. California, 395 U.S. 752, this Court settled the long-standing problems involving the permissible scope of a search incident to a lawful arrest. In Chimel the Court stated:

> "A similar analysis underlies the 'search incident to arrest' principal, and marks its proper extent. When an arrest is made it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its

"concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' -- construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." (Chimel, supra, 395 U.S. at 762-63) (Emphasis added)

Chimel clearly limits the scope of a search incident to an arrest to that area wherein the suspect can obtain control of a weapon or of destructible contraband. In the present case the United States Court of Appeals held that ". . . there was no danger that he [petitioner] would get to the suitcase, obtain a weapon or destroy any evidence. . . inside." (U.S. v. Mehciz,

United States Court of Appeals for the Ninth Circuit, No. 25,868, January 11, 1971 at page two) It seems, therefore, that the Court expressly placed the search in this case outside of this Court's ruling in Chimel.

CONCLUSION

With Chimel this Court finally outlined precise standards which can be utilized by a police officer faced with an in-the-field problem regarding a search incident to an arrest. The Appellate Court's decision will do little more than confuse this now settled area. It is respectfully submitted that a Writ of Certiorari shou issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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